

REMARKS

Prior to entry of this Amendment:

- Claims 49-62, 70, and 73-80 are pending in the present application
- Claims 49-62, 70, and 73-80 stand rejected
- Claims 49, 61-62, 73, 74 and 80 are the only independent claims (6 independent claims)

A. Restriction Requirement Withdrawn

We are grateful for the Examiner's withdrawal of the restriction requirement.

B. Section 103(a) Rejection

The Examiner rejects Claims all of the pending claims (Claims 49-62, 70, and 73-80) under Section 103(a) as being obvious in light of findings allegedly supported by evidence in Hucal (5,933,817) and Musmanno (4,346,442) and (with respect at least to Claims 57, 76, and 79) findings that the Examiner admits are not supported by any evidence of record but are merely "obvious" or "well known."

We disagree that the only evidence cited (Hucal and Musmanno) can support a finding of obviousness with respect to any of Claims 49, 61, 62, and 80. Hucal and Musmanno are not substantial evidence that all of the claimed subject matter was known, and also are not substantial evidence that the asserted motivation was known. The Examiner has failed to establish a prima facie case for rejection for at least these reasons.

The Examiner asserts:

Huncal failed to teach, providing an offer to a customer associated with the credit account, wherein the offer comprises an offer to provide the payment to the customer if the customer agrees to the modification of the parameter. Musmanno teaches, providing an offer to a customer associated with the credit account, wherein the offer comprises an offer to provide the payment to the customer if the customer agrees to the modification of the parameter (col. 2, lines 32-58 and col. 4, lines 1-17).

[Office Action, page 3]. The Examiner admits that Hucal does not teach providing such an offer. We disagree that Musmanno is substantial evidence that providing such an offer was known. Column 2, lines 32-58 describes how "income or receipts...are applied to the overall subscriber's account in a predetermined,

hierarchical manner” that maximizes returns or minimizes interest charges. This portion has nothing to do with providing an offer to a customer that is in any way related to an agreement to modify a parameter, much less a payment to a customer for such agreement to modify. We request that the Examiner clarify the specific language in this paragraph that the Examiner believes is evidence that *providing an offer to a customer associated with the credit account, wherein the offer comprises an offer to provide the payment to the customer if the customer agrees to the modification of the parameter* was known.

Column 4, lines 1-17 of Musmanno also has nothing to do with providing an offer to a customer that is in any way related to an agreement to modify a parameter, much less a payment for such agreement to modify. We request that the Examiner clarify the specific language in this paragraph that the Examiner believes is evidence of such features. As Musmanno is the only evidence of record offered in support of the Examiner’s finding that *providing an offer to a customer associated with the credit account, wherein the offer comprises an offer to provide the payment to the customer if the customer agrees to the modification of the parameter* was known, and Musmanno cannot support such a finding, the Examiner has failed to establish a prima facie case of obviousness. Accordingly, the Section 103(a) rejection of Claims 49, 61, 62, and 80 must be withdrawn.

Further, the evidence cannot support the asserted motivation and even if it could, that motivation would not suggest the specific modification of Hucal to allow for *providing an offer to a customer associated with the credit account, wherein the offer comprises an offer to provide the payment to the customer if the customer agrees to the modification of the parameter*. The Examiner asserts that the motivation is: “because such a modification would allow Hucal to provide a customer with special services if the customer complies with the credit regulations and earns a “cashback” benefit on his or her credit account.” [Office Action, page 3]. The Examiner does not indicate any evidence of record that supports this alleged motivation. The rejection fails for at least this reason.

Also, as we understand the motivation, it has nothing to do with the desirability of providing an offer to provide a payment to a customer if the customer agrees to a modification of a parameter. The Examiner does not attempt to explain what compliance with “credit regulations” or “special services” has to do with agreeing to a modification of a parameter, or a payment in exchange for agreeing to such a modification. There is no hint in Hucal or Musmanno that providing such an offer is a “special service.” Hucal and Musmanno also do not appear to suggest anything related to a “cashback” benefit. There is also no evidence of why one of ordinary skill in the art would have looked to the securities

brokerage/cash management system of Musmanno to modify the revolving credit program system of Hucal—the systems do not appear to be analogous, and the Examiner does not introduce any evidence that they are. The Examiner's asserted motivation is a convenient assumption that is not supported by the evidence and would not even suggest the specific claimed subject matter. The Examiner has failed to establish a prima facie case of obviousness for at least these reasons.

The Section 103(a) rejections of independent Claims 49, 61, 62 and 80 (and Claims 50-60 dependent from Claim 49) are not supported by substantial evidence and must be withdrawn.

Further with respect to Claim 57, the Examiner relies on a finding that the Examiner admits is not supported by the only evidence relied on (Hucal and Musmanno). The rejection of Claim 57 fails for at least this reason. The Examiner is obligated to make of record objective and substantial evidence in support of the finding that it was "well known in the art when applying for credit or a loan, etc. the applicant's (customer's) credit report which includes the past payment history and the income of the customer are always checked and the loan amount (credit) and rate of interest are based mainly on these factors." [Office Action, page 5]. Without such objective evidence, the Examiner cannot have established a prima facie case of obviousness. The rejection of Claim must be withdrawn.

With respect to independent Claims 70, 73, and 74, the Examiner asserts that Musmanno teaches *determining that a customer associated with a credit account is dissatisfied with the credit account* at Column 3, lines 49-68. We disagree. Nothing in the cited portion, which is generally directed to computing and updating credit limits for customers, remotely hints at customer dissatisfaction with a credit account. The Examiner does not even attempt to explain how any particular language in the cited portion or otherwise in Musmanno might suggest the claimed subject matter. The only motivation indicated is disclosed in our disclosure and is not otherwise in evidence. The Examiner cannot rely on our disclosure, but must identify objective evidence in support of a finding that the motivation was known. The Examiner has failed to indicate any such evidence. Accordingly, the Examiner has failed to establish substantial evidence that any such subject matter was known, much less a motivation for modifying the Hucal system to provide for such features.

Also, we traverse the Examiner's assertion that Hucal teaches the feature of *presenting the customer with an offer to modify the at least one term of the credit account, wherein the offer to modify the at least one term of the credit account includes an offer of the payment*. Nothing in Hucal (or Musmanno) suggests that such a feature was known. The cited portion of Hucal (Column 5) is not evidence

supporting such a finding. The cited portion describes different interest rates that may be based on different amounts paid by a customer. This does not remotely suggest a payment to a customer to modify a term of a credit account, or an offer of such a payment in exchange for modifying a term. The Examiner does not attempt to explain how any language of Column 5 teaches any such features.

For the reasons stated, the rejections of Claims 70 (and claims 75-79 dependent), 73, and 74 must be withdrawn for failure to establish a prima facie case of obviousness.

Further with respect to Claim 76, the Examiner again relies on a finding that the Examiner admits is not supported by the only evidence relied on (Hucal and Musmanno). The rejection of Claim 76 fails for at least this reason. The Examiner is obligated to make of record objective and substantial evidence in support of the finding that it was known (and obvious to provide for) *transmitting to the customer, based on the evaluation, at least one of an acceptance and a rejection of the requested modification*. The Examiner simply and conveniently concludes that it would have been obvious to provide for such a feature, while admitting that none of the cited evidence can support such a finding. [Office Action, page 7]. The rejection of Claim 76 (and claims 77 and 78 dependent) is improper at least for this failure to establish a prima facie case of obviousness based on substantial evidence. The rejection of Claims 76-78 must be withdrawn.

Further with respect to Claim 79, the Examiner yet again relies on a finding that the Examiner admits is not supported by the only evidence relied on (Hucal and Musmanno). The rejection of Claim 76 fails for at least this reason. The Examiner is obligated to make of record objective and substantial evidence in support of the finding that it was known (and obvious to provide for) *wherein the determination that a customer is dissatisfied with the credit account is based on receiving, from the customer, a request to cancel the account..* The Examiner simply and conveniently concludes that such subject matter was “well known” and that it would have been obvious to modify the Hucal system to provide for such a feature, while admitting that none of the cited evidence can support such a finding. [Office Action, pages 7-8]. The rejection of Claim 79 is improper at least for this failure to establish a prima facie case of obviousness based on substantial evidence. The rejection of Claims 79 must be withdrawn.

Further with respect to independent Claim 80, the Examiner relied on the rejections of Claims 49, 61, and 62 and thus ignored the explicit features of *receiving an indication that the customer agrees to the modification and providing the payment to the customer after receiving the indication*. Nothing in the cited evidence (Hucal and Musmanno) suggests providing payment to a customer after

receiving an indication of agreement to a modification. The Examiner has thus failed to establish with substantial evidence that all of the claimed subject matter was known, and that any motivation for providing such subject matter was known. The rejection of Claim 80 must be withdrawn for failure to establish a prima facie case of obviousness.

Accordingly, we request that the Examiner withdraw all of the Section 103(a) rejections of all of the pending claims.

C. Clarifications

The Examiner indicates: "Claims 49, 70, 73, and 74 have been amended and claims 75-80 have been added in this communication filed 04/11/05 entered as Response to Election/Restriction." [Office Action, page 2]. We note that the Amendment mailed April 8, 2005, only amended Claim 70. Claims 49, 70, 74, and 74 were amended and Claims 75-80 were added in the Amendment mailed December 20, 2004.

Our arguments in this paper with respect to various findings and assertions by the Examiner are sufficient to point out fatal failures of the Examiner's Section 103(a) rejections. Our silence with respect to other assertions and findings as to what is taught by Hucal and Musmanno or what features and motivations were known does not indicate agreement. We will address those other statements as necessary in future prosecution.

We also wish to note an obvious typographical error made in the paper mailed April 8, 2005 and noticed during a review of the file. On page 11, we stated: "The Examiner stated that the Section 101 rejection of Claim 80 was an error and agreed that Claim 80 is directed to non-statutory subject matter." Clearly, this should have reflected the agreement that Claim 80 is directed to statutory subject matter.

D. Authorization to Charge Appropriate Fees

We do not believe that any fees are necessary for this response.

Please grant a petition for any extension of time required to make this Response timely.

If necessary, please charge any appropriate fees necessary per the following information:

Deposit Account: 50-0271

Order No.: 96-108-C2

Please credit any overpayment to the same account.

A duplicate copy of this authorization is enclosed for such purposes.

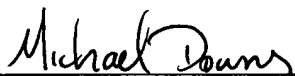
E. Conclusion

It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

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Date

Respectfully submitted,



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